

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 87

4. Waste Derived from Treating Exempt or Excluded Wastes

Residues from treating, storing, or disposing of hazardous waste are included in the definition of hazardous waste (\_261.3(c)(1)). Can residues resulting from incinerating the following wastes which are exempt or excluded from regulation meet the definition of hazardous waste?

- (a) Ash produced by incinerating hazardous waste generated by less than 100 kg/mo small quantity generators whose waste is exempt from full regulation by \_261.5(b).
- (b) Ash produced from incinerating only household waste which is excluded from the definition of hazardous waste per \_261.4(b)(1).
- (c) Ash produced from incinerating EP toxic arsenical treated wood which is excluded from the definition of hazardous waste under \_261.4(b)(9).
  - (a) Yes. Although \_261.5(b) exempts wastes from small generators producing <100 kilograms per month from regulation under Parts 262-266 and Parts 270 and 124, it does not exempt the waste from being classified as hazardous, nor does it imply that the waste is not hazardous. A discussion of the preamble of the August 1, 1985 Federal Register mentioned that any hazardous waste, regardless of its point of origin, is hazardous waste. This logic could only apply to < 100 kg/mo generators' waste, as well as up to >100 kg/mo generators' waste (50 FR 31299). The incinerator would not be required to have a RCRA permit in order to receive hazardous waste from <100 kg/mo generators per \_265.1(c)(5) and \_264.1(g)(1), but the incinerator could itself generate a hazardous waste ash that would be subject to regulations under Parts 262-266.

(b) No. Section 261.4(b)(1) excluded household waste that has been recovered (e.g., refuse-derived fuel) from regulation as a hazardous waste. The preamble of the May 19, 1980 Federal Register stipulated that residues remaining after treatment (e.g., incineration) of household waste are not subject to regulation as hazardous waste (45 FR 33099).

(c) Yes. The exclusion for arsenical treated wood, as discussed in the preamble of the November 25, 1980 Federal Register, pertains to arsenical-treated wood that is land disposed by someone who uses the wood for its intended end use, (45 FR 78531). This exclusion does not extend to EP toxic waste generated by the incineration of the wood. The incineration of the wood may be subject to regulation if the wood exhibits the characteristic of EP toxicity.

Source: Matt Straus (202) 475-8551  
Research: Kim Gotwals

—